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MAR 15 2002

OFFICE OF THE DIRECTOR
TC 3600

In re Application of
James W. Nichol
Application No. 09/106,841
Filed: June 30, 1998
For: ANGLED GRIPPING JOINT
COMBINATION FOR SUPPORT
STRUCTURES

:
:
DECISION ON PETITION
:
TO WITHDRAW THE
:
HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment filed on September 26, 2001. There is no fee for this petition

The petition is **DISMISSED**.

A review of the file record indicates that the application was held abandoned for failure to timely respond to the final Office action dated January 3, 2001.

Initially it is noted that the petition is signed by Paul Gornall who is apparently registered to practice in Canada but not in the United States. Since Mr. Gornall is not registered to practice in the U.S., his signature is not considered to be acceptable under the requirements outlined in 37 CFR 1.33(b). Since the petition does not have an acceptable signature, it will not be treated on the merits.

Since applicant's petition deals with a fax submission, however, attached is a pro se guide to the manner of certifying responses filed and the procedures to be followed if such a submission is lost. Applicant, being outside the U.S., could not use the Certificate of Mailing procedures, but should become familiar with the Certificate of Transmission procedures that can be used from a foreign country. If a fax submission is lost and such submission did not include a Certificate of Transmission, it is extremely unlikely any petition to withdraw the holding of abandonment can be granted.

As an additional note, any change of correspondence address cannot be enacted by an attorney not registered to practice before the Office. MPEP 601.03. Therefore the correspondence address remains unchanged, and **for this decision only**, a copy will also be sent to the requested new address of record.

Telephone inquiries relative to this decision should be directed to Special Programs Examiner Steven Meyers at (703) 308-3868.

Applicant is advised that abandonment of this application may also be overcome by means of a Petition to Revive under 37 CFR §1.137. Such a petition may follow either of two different paths, depending upon whether the failure to properly respond to the Office letter within the time set was unavoidable, or whether it was unintentional. Each of these two different types of petition requires its own type of showing, and its own type of fee. They are discussed separately below .

I. Failure to make timely response was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to make a timely response was unavoidable (37 CFR §1.137(a)) must be accompanied by a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, by a proposed response, and by the petition fee. That fee is \$55.00 (for a small entity) or \$110.00 (for a large entity).

No consideration will be given to the substance of a petition until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay resulting in failure to respond in timely fashion to the Office action was unavoidable.

II. Failure to make timely response was unintentional.

A petition to revive an abandoned application on the grounds that the failure to make timely response was unintentional (37 CFR §1.137(b)) must be accompanied by a statement that the entire delay was unintentional; by a complete proposed response to the Office Action; and by a petition fee. That fee is \$640.00 (for a small entity) or \$1280.00 (for a large entity).

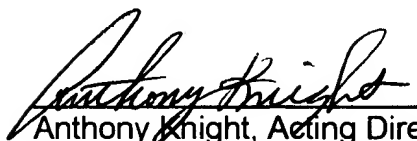
Please direct any correspondence relating to a Petition to Revive to the Deputy Commissioner for Patent Examination Policy, Box DAC, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of Petitions. Any questions concerning the petition to revive should be directed to the staff in the Petitions Office at (703) 305-9285.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Deputy Commissioner for Patent Operations
Washington, D.C. 20231
Attention: Special Programs Examination Unit
Technology Center 3600

By Fax: (703) 306-4597
Attn: Special Programs Examination Unit

The application is being returned to Files Repository until such time as a renewed petition is filed.



Anthony Knight, Acting Director
Patent Technology Center 3600
(703) 308-1020
Facsimile No.: (703) 306-4597

SM/sm: 3/3/02

SM

Attachment: Pro Se Guide to Certifying Responses

Cc: James W. Nichol
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It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, D.C. 20231" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)____-____ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

NOTICE TO APPLICANT: In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.